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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,436	08/27/2001	Lutz Hoppe	Mo-5487/WW-5382	4134

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BAYER CHEMICALS CORPORATION  
PATENT DEPARTMENT  
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EXAMINER

EASHOO, MARK

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/914,436

Applicant(s)

HOPPE ET AL.

Examiner

Mark Eashoo, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all-obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 5-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luhmann et al. (US Pat. 4,590,019) in view of Dillehay et al. (US Pat. 5,487,851).

Regarding claims 1 and 7: Luhmann et al. teaches the basic claimed process of producing a compacted free-flowing nitrocellulose product (abstract), comprising the steps of: pressing/extruding raw lacquer material, moistened with water and/or alcohol, through a die hole (example).

Luhmann et al. does not teach a die having holes. Nonetheless, Dillehay et al. teaches pressing a nitrocellulose solution through multiple die holes (2:11-37). Luhmann et al. and Dillehay et al. are combinable because they are concerned with a similar technical difficulty, namely, forming granules of nitrocellulose materials. At the time of invention a person having ordinary skill in the art would have found it obvious to have pressing a nitrocellulose solution through multiple die holes, as taught by Dillehay et al., in the process of Luhmann et al., and would have been motivated to do so in order to produce a higher output of product (ie. economy of

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scale). It is noted that since the product steps of instant claim 1 have been rendered obvious by this art rejection it is intrinsic that the product is also met by the same rejection.

Regarding claim 5: Luhmann et al. further teaches cutting to length (example).

Regarding claim 6: Luhmann et al. further teaches a nitrogen content of 10.2 to 12.4% (2:21-30).

Regarding claim 9: Luhmann et al. further teaches a compacted product comprising a moistening agent content of 35% (example).

Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luhmann et al. (US Pat. 4,590,019) in view of Dillehay et al. (US Pat. 5,487,851), as applied to claims 1, 5-7, and 9 above, and further in view of Foster (US Pat. 1,978,070).

Luhmann et al. teaches the basic claimed process as set forth above.

Regarding claims 2 and 8: Luhmann et al. does not teach a specific pressing ratio. Nonetheless, Foster teaches that pressing to form a required shape and size (2:5-15). Luhmann et al. and Foster are combinable because they are concerned with a similar technical difficulty, namely, forming granules of nitrocellulose materials. At the time of invention a person having ordinary skill in the art would have found it obvious to have pressing a nitrocellulose solution at a specific pressing ratio, as taught by Foster, in the process of Luhmann et al., and would have been motivated to do so in order to a desired product shape and/or size.

It is noted that where the only difference between the prior art and the instant claims is a recitation of relative dimensions of the claimed device, in this case a pressure ratio defined by relative die hole dimensions, and the prior art device, the claimed device is not patentably distinct from the prior art device. *In re Gardner v. TEC Systems, Inc.* 220 USPQ 777 (CAFC 1984). Since the function of the prior art device is not patentably distinct from the prior art device because of relative dimensions, it follows that the process of using such device does not cause a different or unobvious process step. Furthermore, if it is applicants' position that this is not the case and a significant difference in the process is present, then: 1.) evidence would be needed to be present to support applicants' position, and 2.) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching that the claimed structure causes a material change other than expected compaction and product size.

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Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luhmann et al. (US Pat. 4,590,019) in view of Dillehay et al. (US Pat. 5,487,851), as applied to claims 1, 5-7, and 9 above, and further in view of Panthal et al. (US Pat. 5,399,297).

Luhmann et al. teaches the basic claimed process as set forth above.

Regarding claims 3 and 4: Luhmann et al. does not teach forming particulates using circulating/oscillating breakers/wheels.

Nonetheless, Panthal et al. teaches forming particulates, from a moist solid, using circulating/oscillating breakers/wheels (3:5-20).

Luhmann et al. and Panthal et al. are combinable because they are concerned with a similar technical difficulty, namely, forming granules of moist materials. At the time of invention a person having ordinary skill in the art would have found it obvious to have formed particulates using circulating/oscillating breakers/wheels, as taught by Panthal et al., in the process of Luhmann et al., and would have been motivated to do so because Panthal et al. suggests that breakers, mills and pelletizing machines are equivalent alternative means for granulating moist materials.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hartshorn, Plimpton, Dillehay et al. '150, Reynolds et al., Cougoul et al., Stiefel et al., De Vido et al., and Lufkin all teach the basic state of the art.

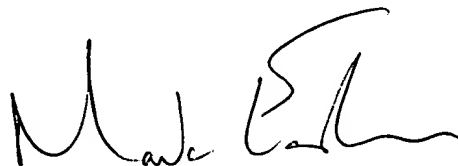
### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Eashoo, Ph.D.  
Primary Examiner  
Art Unit 1732

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me

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